IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.6617 OF 2004
WITH
SPECIAL CIVIL APPLICATION NO.102 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDANBEN WD/O BALUBAI DAPAKAAWALA

Versus

MAHESHBHAI BALUBHAI DAPAKAAWALA & ORS.

Appearance:

1. Special Civil Application No. 6617 of 2004
   MS. K.J. BRAHMBHATT for Petitioner
   MS. VARSHA BRAHMBHATT for Petitioner
   RULE SERVED for Respondent Nos. 1,3
   SERVED BY AFFIX.-(R) for Respondent No. 2
2. Special Civil Application No. 102 of 2004
   MS. SHAILI A. KAPADIA for Petitioner
   MS. K.J. BRAHMBHATT for Respondent

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 04/05/2005

COMMON ORAL JUDGEMENT

1. Special Civil Application No.6617 of 2004 is filed by the petitioner, original plaintiff-Chandanben Balubhai Dapakaawala, challenging the order dated 17th December, 2003 passed by the learned 6th Joint Civil Judge (S.D.), Surat below Application-Exh.7 in Special Civil Suit No.196 of 2003 whereby the application was partly allowed and interim maintenance of Rs.2,000=00 per month was directed to be paid to the plaintiff till the final disposal of the suit. The said order is also challenged by the original defendant no.2, Maheshbhai Balubhai Dapakaawala, by filing Special Civil Application No.102 of 2004.

2. Heard Ms.K.J.Brahmbhatt, learned Advocate for the petitioner, original plaintiff, and Ms.Shaili A.Kapadia, learned Advocate for the respondent, original defendant no.2.

3. Taking into consideration the documents on record and the facts and circumstances of the case, this Court is of the view that the observation of the trial Court regarding interim maintenance, awarded in paragraph-8, is not required to be interfered with. The trial Court has granted Rs.2,000=00 per month as interim maintenance keeping in mind the income of Rs.1 lakh per annum. The only modification, which this Court deems it just and proper in the facts and circumstances of the case, is that the petitioner of Special Civil Application No.6617 of 2004 is entitled for the interim maintenance from the date of application i.e. 28th September, 2001 and not from the date of the order i.e. 17th December, 2003, till the disposal of the suit. Hence, the following order is passed:

(i) The observation of the trial Court directing the defendant no.2 to pay Rs.2,000=00 per month as interim maintenance from the date of the order i.e. 17th December, 2003 is modified by directing the payment of Rs.2,000=00 per month as interim maintenance from the date of the application of the plaintiff i.e. 28th September, 2001.

(ii) It is made clear that if any payment is made by the petitioner of Special Civil Application No.102 of 2000 pursuant to the criminal proceedings, then, the said amount will be deducted from the amount of Rs.2,000=00 and if

any payment is not made, full amount of Rs.2,000=00 will be paid with effect from 28th September, 2001.

(iii) Since the suit is of the year 2003 and the original plaintiff (petitioner in Special Civil Application No.6617 of 2004) is a senior citizen, the trial Court is directed to dispose of the suit within six months if it has ripe for hearing, otherwise within a period of two years, from the date of receipt of writ of this order.

4. In the result, with the aforesaid directions and observations, Special Civil Application No.6617 of 2004 is partly allowed and Special Civil Application No.101 of 2002 is disposed of accordingly.

Rule is made absolute to the aforesaid extent only. No order as to costs.

[K.S.Jhaveri, J.]

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